IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.2884 OF 2007.

(Sau.Mayadevi Rameshchandra Saboo Vs. State of Mah. & Oth.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. S.R. Deshpande, Advocate for Petitioner.
Mrs. Bharti Dangre, A.G.P. for Respondents No.1 & 2.
Mrs. Anjali Joshi, Advocate for Respondent No.3.

CORAM : A.H.JOSHI AND
R.C.CHAVAN, JJ.

DATED : JULY 05, 2007.

1. This petition is moved for two reliefs, namely :

(a) seeking restraint against the Collector from holding election of the President of the Municipal Council, process whereof was initiated by him and for which notice dated 29.06.2007 has been issued ; and,

(b) for a direction that respondent No.2 Collector

shall be directed to hold enquiry and decide the petition which has been filed by one Smt. Ashatai Manikwade for disqualifying respondents No.4 and 5.

2. According to learned Advocate Mr. Deshpande :-

(i) If the office of a Municipal Council of which President was elected by direct election fall vacant for any reason, the President of such Council will have to be elected directly by disregarding the scheme of Section 51 as it stands amounted providing that now the President is to be elected in case of vacancy from amongst the councilors;

(ii) The amending Act No.XXXVI of 2006 does not operate retrospectively ;

(c) Section 51 as stood prior to amendment created a right in favour of a voter to contest election to the post of President. This is accrued right and cannot be taken away.

3. The interpretation advanced by the learned Advocate

Mr. Deshpande, therefore, purports to an attempt to infuse the scheme in the enactment which the legislature has removed from law.

4. We find that accepting interpretation advanced by the learned Advocate Mr.Deshpande would amount to totally conniving at the scheme of amendment when competent legislature has amended Section 51.

5. The submissions consist of ingenuity, but are not able to stand to the acid test of law.

6. In this background, we find that the petition does not call for any interference as far as prayer (i) is concerned.

7. We find that in so far as part of prayer clause (ii) for issuance of direction to decide the reference is concerned, there should be no difficulty in issuing limited direction, however, we cannot oblivious to the fact that statutory Rules framed under the Maharashtra Act No.XX of 1987 lay down mechanism and procedure to be followed by the Collector. We, therefore, direct the Collector-Respondent No.2 to hear and decide the reference, according to law, as expeditiously as possible.

8. We clarify that this Court has not granted stay to the election process while we have said that the procedure of

disqualification is to be concluded expeditiously.

9. The petition is accordingly disposed of.

JUDGE. **JUDGE.**

RR.